IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

MFA.No. 1018 of 2002()

OPMV.625/1996 of IIND ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM
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APPELLANT: 1ST PETITIONER

LEKSHMI, W/O. SALUDAS,
D/O. PROF.M.S.PRASANNA, RESIDING AT ASWATHY,
NAGIARKULANGARA, PALLIPADU VILLAGE,
ALAPPUZHA DISTRICT.

BY ADV. SRI.S.ABDUL RAZZAK

RESPONDENTS: RESPONDENTS 1 TO 6 & 2ND PETITIONER
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1. **CHRISTOPHER FRANCISE,**
   S/O. FRANCISE RESIDING AT PUSHPA NIVAS,
   T.C.32/1071, NEAR ALL SAINTS COLLEGE, BEACH P.O.,
   VETTUKADU, THIRUVANANTHAPURAM.

2. **THE DIVISIONAL MANAGER, UNITED INDIA**
   INSURANCE COMPANY LIMITED, BEACH ROAD, KOLLAM -1.

3. **MOHANAN PILLAI, S/O. RAGHAVAN PILLAI,**
   PUTHEN VILA VEEDU, ULIYANADU, KARAMKODE,
   CHANTHANNUR.

4. **THE DIVISIONAL MANAGER, THE NATIONAL**
   INSURANCE COMPANY LIMITED, PARAMESWARAN PILLAI,
   BHAVAN HOSPITAL ROAD, KOLLAM.

**5. VASANTHA KUMARI, W/O. SASIDHARAN,
VASANTHA BHAVAN, KALLUVATHUKKAL P.O.,
KALLUVATHUKKAL VILLAGE.**

**6. SASIDHARAN S/O. RAMADAS, VASANTHA BHAVAN
KALLUVATHUKKAL P.O.**

**7. RAHUL DAS, MINOR REPRESENTED BY GUARDIAN
VASANTHA KUMARI, W/O. SASIDHARAN, VASANTHA BHAVAN,
KALLUVATHUKKAL P.O.**

**BY ADV. SRI.JOE KALLIATH - R4
SRI.K.SUBASH CHANDRA BOSE - R5 - R7
SMT.P.K.SANTHAMMA - R2**

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/ 11/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A. NO.1018/2002

ORDER ON CMP. NO.6271/2002 IN MFA. 1018/2002

DISMISSED

27.11.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.HEMA, JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1018 OF 2002

Dated 27th November, 2007

JUDGMENT

Koshy,J.

Appellant is the widow of Saludas, who died at the age of 23 in a road accident while travelling in a scooter. The accident was at about 16 hours on 20.1.1996. Saludas while riding the scooter with Registration No.KL20D.1140 through NH 47 was hit by a Tempo Van with Registration No.KL-01-G.1114 at Thattamala junction near Kollam. Saludas and the pillion rider sustained fatal injuries in the accident and Saludas succumbed to his injuries at 19 hours on the same day at the Medical College Hospital, Thiruvananthapuram. Appellant and her minor child (who was only three months old infant) filed application for compensation claiming an amount of Rs.16 lakhs. According to the claimant, his monthly income was Rs.6,000/- and he was a contractor and money lender and was also conducting the public telephone booth. It is also submitted that he was the sole bread winner of his family. The appellant herself is the daughter of a College Professor. However, the tribunal did not accept the contention that he was earning Rs.6,000/- in the absence of evidence. But only fixed Rs.2,000/- as the monthly

income. Even though it was found that accident occurred due to the negligence of the driver of the offending vehicle insured by the 2nd respondent Insurance company, the total compensation awarded was only Rs.1,10,000/-. It has come out in evidence that the appellant married after $1^1/_2$ years and the child was thereafter under the custody of the 5th respondent who is the guardian of the child, who is now 7th respondent in the appeal. Tribunal has awarded Rs.8,000/- as loss of dependency to the 1st petitioner, Rs.43,000/- to the child and Rs.32,000/- to the additional 5th respondent and 6th respondent, being the paternal grand father and paternal grand mother. The amount awarded for loss of dependency is questioned in this appeal.

2. Deceased was 23 years old at the time of accident. The Apex Court held that maximum multiplier should be given for the death of the person whose age is between 20 and 25 and it was argued that since the life expectancy has increased and the interest rate is going down a higher multiplier should be applied than those mentioned under the 2nd Schedule. But if 2nd Schedule is taken, 17 is the apt multiplier. Tribunal has taken Rs.2,000/- as the monthly income. We are of the view that the above amount is very low. Deceased was maintaining a family. The very fact that his wife was a College Professor who shows the social status. He was a Degree holder and a

Students leader in college days as certified in Ext.A16. However in the absence of data and even if Rs.2,000/- only is taken as monthly income the monthly loss of dependency after deducting about $^{1}/_{3}^{rd}$ for personal expenses, is Rs.1,350/-. Therefore yearly income is Rs.16,200/- and after deducting $^{1}/_{3}^{rd}$ yearly loss of dependency will be Rs.10,800/-. If 17 is taken as the multiplier, compensation payable will be Rs.1,83,600/-. So the additional compensation payable will be Rs.73,600/-. We are of the opinion that the 2nd respondent Insurance company should deposit the above amount with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal. Out of the above amount, Rs.11,000/- should be given to the appellant 1st petitioner who married after $1^{1}/_{2}$ years and entire balance should be deposited in a nationalised bank which can be withdrawn by the 7th respondent when he attains the age of 21. Appeal is allowed accordingly.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

prp

J.B.KOSHY, K.HEMA, JJ

M.F.A.NO.1018 OF 2002

JUDGMENT

Dated 27th November, 2007